

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

BellSouth Petition for  
Limited Modification of LATA  
Boundary to Provide Expanded Local  
Calling Service (ELCS)

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File No. NSD-L-02-02

**MEMORANDUM OPINION AND ORDER**

**Adopted:** May 16, 2002

**Released:** May 17, 2002

By the Chief, Competition Policy Division:

**I. INTRODUCTION**

1. On October 29, 2001, BellSouth Telecommunications, Inc. and BellSouth Corporation (BellSouth), pursuant to section 3(25) of the Communications Act of 1934, as amended,<sup>1</sup> filed a petition to provide two-way, flat-rated, non-optional, expanded local calling service (ELCS) between various exchanges in North Carolina.<sup>2</sup> BellSouth's petition requests limited modification of a local access and transport area (LATA) boundary.<sup>3</sup> For the reasons stated below, we grant BellSouth's request.

**II. BACKGROUND**

2. Requests for new ELCS routes are generally initiated by local subscribers. IntraLATA ELCS routes can be ordered by the state commission.<sup>4</sup> Under section 3(25)(B) of the

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<sup>1</sup> See 47 U.S.C. § 153(25).

<sup>2</sup> See Public Notice, *Comment Sought on BellSouth Request for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service Between Certain Exchanges in North Carolina*, NSD-L-02-02 (rel. Feb. 22, 2002). No comments were filed. ELCS is requested between Spring Hope and the Raleigh and Zebulon exchanges. Spring Hope is a Carolina Telephone and Telegraph Company (Carolina) exchange. Raleigh and Zebulon are BellSouth exchanges.

<sup>3</sup> Section 3(25) of the Act defines LATAs as those areas established prior to enactment of the 1996 Act by a Bell Operating Company (BOC), as permitted under the AT&T Consent Decree; or "established or modified by a BOC after such date of enactment, and approved by the Commission." 47 U.S.C. § 153(25).

<sup>4</sup> *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id.*

Act, requests for interLATA ELCS routes fall within the Commission's exclusive jurisdiction over

the modification of LATA boundaries.<sup>5</sup> Applying a two-part test, the Commission will grant a request for an ELCS LATA modification where a petitioning BOC shows that the proposed modification is justified by a significant community of interest among the affected exchanges, and that the grant of the requested waiver will not have any anticompetitive effects.<sup>6</sup> A BOC is deemed to have made a *prima facie* case supporting grant of the proposed modification if the ELCS petition: (1) has been approved by the state commission; (2) proposes only traditional local service (*i.e.*, flat-rated, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results, usage data, and descriptions of the communities involved; and (5) involves a limited number of customers or access lines.<sup>7</sup>

3. The BellSouth petition proposes to establish two-way, flat-rated, non-optional ELCS, and is accompanied by: (1) a statement that only traditional local service is proposed; (2) an order issued by the North Carolina Utility Commission indicating that the commission found a sufficient community of interest to warrant such service; (3) a statement that a community of interest exists between the respective exchanges;<sup>8</sup> (4) a statement of the number of access lines involved;<sup>9</sup> (5) usage data;<sup>10</sup> and (6) that *de minimis* rate increases will result. Support for this ELCS request was evidenced by the support of the Franklin County Board of Commissioners, the Franklin County Economic Development Commission, and the Franklin County Planning Board.<sup>11</sup>

### III. DISCUSSION

4. We conclude that the information in BellSouth's petition satisfies the criteria established by Commission precedent. Principally, it is the residents of Zebulon and Spring Hope

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<sup>5</sup> *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd. 14,392, 14,399 (1999) (*Arizona LATA Order*).

<sup>6</sup> *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10649-50 (1997) (*July 1997 Order*). In this order, the Commission also delegated authority to the Common Carrier Bureau (now the Wireline Competition Bureau) to act on petitions to modify LATA boundaries. *Id.* at 10657-58.

<sup>7</sup> *Id.* at 10659.

<sup>8</sup> 88.3 percent of Spring Hope residents and businesses that returned ballots favor ELCS to Raleigh and Zebulon. No polling was required of Raleigh and Zebulon residents.

<sup>9</sup> Spring Hope has 4,628 access lines. Raleigh has 296,487 access lines. Zebulon has 8,467 access lines.

<sup>10</sup> BellSouth did not provide usage data because it does not transport traffic across LATA boundaries. Carolina submitted data showing that 54 percent of its customers made calls from Spring Hope to Raleigh, and 32 percent made calls from Spring Hope to Zebulon.

<sup>11</sup> Spring Hope is partly located in Franklin County.

that will call into the much larger Raleigh exchange. Thus, we believe that the small number of access lines in the Zebulon and Spring Hope exchanges, and the small volume of traffic involved

for the proposed ELCS areas in this petition, plus the fact that the type of service to be offered is two-way, flat-rated, non-optional local service, makes it highly unlikely that provision of ELCS service would reduce BellSouth's motivation to open its local market to competition. Moreover, granting BellSouth's petition serves the public interest by permitting a minor LATA modification where such modification is necessary to meet the needs of local subscribers. Accordingly, we approve BellSouth's petition for a limited LATA modification to provide two-way, flat-rated, two-way, non-optional ELCS. In reaching this conclusion, we note that no comments were filed opposing this modification.

5. We note that we grant this relief solely for the limited purpose of allowing BellSouth to provide ELCS between the specific exchanges or geographic areas identified in the request. The LATA is not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, flat-rated, non-optional ELCS between the specified exchanges will be treated as intraLATA, and the provisions of the Act governing intraLATA service will apply.<sup>12</sup> Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply.

## VI. CONCLUSION AND ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of BellSouth Telecommunications, Inc. and BellSouth Corporation for a LATA modification for the limited purpose of providing two-way, flat-rated, non-optional ELCS at specific locations, identified in File No. NSD-L-02-02, IS APPROVED. The LATA boundary is modified solely for the purpose of providing two-way, flat-rated, non-optional ELCS between points in the specific exchanges or geographic areas indicated in the request. The LATA boundary for all other services shall remain unchanged.

7. IT IS FURTHER ORDERED that pursuant to section 416(a) of the Act, 47 U.S.C. § 416(a), the Secretary SHALL SERVE a copy of this order upon the petitioner, BellSouth Telecommunications and BellSouth Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Competition Policy Division  
Wireline Competition Division

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<sup>12</sup> The BOC may provide ELCS service without meeting the section 271 requirements, *see* 47 U.S.C. § 271(a), and a separate affiliate is not required, *see* 47 U.S.C. § 272(a)(2)(B).